



The State of New Hampshire
Department of Environmental Services



Michael P. Nolin
Commissioner

L.W. Packard & Company, Inc.
PO Box 515
Ashland, NH 03217-0515

**NOTICE OF PROPOSED
ADMINISTRATIVE FINE
No. AF 04-090**

September 16, 2004

I. INTRODUCTION

This Notice of Proposed Administrative Fine is issued by the Department of Environmental Services, Air Resources Division ("the Division") to L.W. Packard & Company, Inc. pursuant to RSA 125-C:15,I-b and Env-C 601.05. The Division is proposing that fines totaling \$2000 be imposed against L.W. Packard & Company, Inc. for the violations alleged below. **This notice contains important procedural information. Please read the entire notice carefully.**

II. PARTIES

1. The Department of Environmental Services, Air Resources Division, is an administrative agency of the State of New Hampshire, having its principal office at 29 Hazen Drive, Concord, NH.
2. L.W. Packard & Company, Inc. ("L.W. Packard") is a New Hampshire corporation having a mailing address of P.O. Box 515, Ashland, NH 03217-0515.

III. STATEMENTS OF FACTS AND LAW SUPPORTING CLAIM(S)

1. RSA 125-C authorizes the Department of Environmental Services ("DES") to regulate sources of air pollution in the State of New Hampshire. RSA 125-C:4 authorizes the Commissioner of DES to adopt rules relative to the prevention, control, abatement, and limitation of air pollution in New Hampshire. Pursuant to this authority, the Commissioner has adopted NH Admin. Rules Env-A 100 *et seq.*
2. RSA 125-C:15,I-b(b) authorizes DES to impose administrative fines of up to \$2,000 per offense for violations of RSA 125-C, or any rule, permit, compliance schedule, stop use order, or order of abatement, issued pursuant to RSA 125-C.
3. L.W. Packard has two facilities, one located in New Hampton ("the New Hampton facility") and one located in Ashland ("the Ashland facility").
4. The Division issued Title V Permit No. TV-OP-025 ("the New Hampton Permit") to L.W. Packard on May 24, 2000 for its operation of the New Hampton facility, and issued Title V Permit No. TV-OP-035 to L.W. Packard on December 22, 2000 for its operation of the Ashland facility. The permits allow L.W. Packard to operate a textile manufacturing operation at each facility.

5. Condition VIII.F, Table 6, item #5 of the New Hampton Permit requires L.W Packard to submit semi-annual permit deviation and monitoring reports (“semi-annual reports”) for the New Hampton facility to the Division for the periods of July through December and January through June, by January 31 and July 31 respectively.
6. Condition VIII.G, Table 7, item #2 of the Ashland Permit requires L.W Packard to submit semi-annual reports for the Ashland facility to the Division for the periods of July through December and January through June, by January 31 and July 31 respectively.
7. Condition VIII.F, Table 6, item #7 of the New Hampton Permit requires L.W Packard to submit an annual compliance certification for the New Hampton facility to the Division and the US EPA by April 15 of the following calendar year.
8. Condition VIII.G, Table 7, item #4 of the Ashland Permit requires L.W Packard to submit an annual compliance certification for the Ashland facility to the Division and the US EPA by April 15 of the following calendar year.
9. On July 12, 2002, the Division received a letter from L.W. Packard dated July 10, 2002, in which it informed the Division that it had chosen to cease all textile manufacturing at its facilities.
10. On August 19, 2002, the Division sent a certified letter to L.W. Packard that explained the permitting options that L.W. Packard could choose to take if it was shutting down its permitted operations, either temporarily or permanently. The options included maintaining both Title V permits, canceling the New Hampton Permit, or opting out of the Title V permitting program for the Ashland facility by applying for a synthetic minor source permit with enforceable operating limitations for the boilers. The letter also included guidance on how to meet the reporting requirements contained in the Title V permits while both facilities were in a shutdown mode.
11. On January 15, 2003, the Division received a final RACT compliance report from L.W. Packard dated January 7, 2003. In the report, L.W. Packard stated that it began shutting down its production at the Ashland facility in August, 2002 and ceased all production as of mid-October, 2002.
12. On January 22, 2003, the Division received the semi-annual report for the period of July through December of 2002 for the New Hampton facility. In the report, L.W. Packard stated that “all manufacturing at the facility ceased permanently on August 29, 2002”.
13. On April 15, 2003, the Division received a letter from L.W. Packard dated April 13, 2003, in which it requested to “opt-out” of the Title V permitting program for both the Ashland and New Hampton facilities. At the New Hampton facility, the manufacturing equipment was shut down and waiting to be sold and the boiler had been “moth-balled”. Only an emergency generator and a fire pump were still operable, and the boiler is below the applicable permitting threshold of Env-A 607. At the Ashland facility, even with the manufacturing operations shut down, L.W. Packard still operates 2 fuel oil-fired boilers which, unless L.W. Packard accepts restrictions on its operations, exceed the major source emission thresholds and require the Title V permit to be maintained.

14. L.W. Packard did not submit the semi-annual report for the New Hampton facility for the period of January through June of 2003 by July 31, 2003.

15. L.W. Packard did not submit the semi-annual report for the Ashland facility for the period of January through June of 2003 by July 31, 2003.

16. On November 4, 2003, the Division sent a certified letter to L.W. Packard that again explained the permitting options available to it, and stated that L.W. Packard is required to comply with all terms and conditions of the Ashland Permit and the New Hampton Permit, including all reporting obligations, even if the facilities are no longer in operation. The letter stated that if L.W. Packard wishes to cancel either Title V permit, it must submit a request in writing. Lastly, the letter informed L.W. Packard that cancellation of the Ashland Permit will require L.W. Packard to first submit an application for a synthetic minor source permit and accept restrictions on the operation of the boilers. Once the Division issues the synthetic minor source permit, then the Ashland Permit can be cancelled and L.W. Packard's obligations under the Title V permit would end.

17. In addition, in the November 4, 2003 letter to L.W. Packard, the Division reminded the source that it had not received the semi-annual reports for either the New Hampton or the Ashland facility for the period of January through June of 2003. In the letter, the Division requested that L.W. Packard submit the semi-annual reports to the Division within 30 days of receipt of the letter.

18. The Division received a phone call from L.W. Packard on November 20, 2003, in which it requested an additional 10-day extension of the 30 days requested in the November 4, 2003 letter in order to submit the late semi-annual reports to DES. On November 21, 2003, L.W. Packard sent a letter to DES in order to document the phone conversation with DES and its request for an extension beyond the 30 days to comply with the reporting obligations of the Title V permits.

19. On December 5, 2003, a representative of the Division's Compliance Bureau met with the Engineering Manager from L.W. Packard at the Division's office. The Division representative reiterated the reporting requirements contained in the Title V permits, explained the requirements as they relate to a source that has shut down its operations, and requested that L.W. Packard keep the Division updated on the status of the past due reports. In addition, the Division representative reminded L.W. Packard that additional semi-annual reports for the period of July through December of 2003 were required to be submitted by January 31, 2004.

20. L.W. Packard did not submit the semi-annual report for the New Hampton facility for the period of July through December of 2003 by January 31, 2003.

21. L.W. Packard did not submit the semi-annual report for the Ashland facility for the period of July through December of 2003 by January 31, 2003.

22. On March 8, 2004, the Division contacted L.W. Packard to request the status of the permits, and if L.W. Packard intended to retain the Title V permits or cancel the New Hampton permit and apply for a synthetic minor permit for the Ashland facility. In addition, the Division reminded

L.W. Packard that it had not submitted the semi-annual reports that were due to be submitted by July 31, 2003 and by January 31, 2004 for either facility. L.W. Packard responded that it intended to retain both Title V permits and that it had contacted an environmental consulting company, GZA GeoEnvironmental, Inc. ("GZA") to prepare the past due reports. Lastly, the Division reminded L.W. Packard that it was required to submit to the Division the annual compliance certifications for calendar year 2003 for both facilities by April 15, 2004.

23. L.W. Packard did not submit the annual compliance certification for the New Hampton facility for calendar year 2003 by April 15, 2004.

24. L.W. Packard did not submit the annual compliance certification for the Ashland facility for calendar year 2003 by April 15, 2004.

25. On April 29, 2004, the Division contacted L.W. Packard to request the status of the past due semi-annual reports for the New Hampton and Ashland facilities that were required to have been submitted to the Division by July 31, 2003, January 31, 2004, and July 31, 2004. In addition, the Division also informed L.W. Packard that the calendar year 2003 annual compliance certifications for the New Hampton and Ashland facilities that were required to be submitted to the Division by April 15, 2004 were now past due.

26. On July 23, 2004, the Division was contacted by GZA requesting information on L.W. Packard's past due Title V reports.

27. L.W. Packard did not submit the semi-annual report for the New Hampton facility for the period of January through June of 2004 by July 31, 2004.

28. L.W. Packard did not submit the semi-annual report for the Ashland facility for the period of January through June of 2004 by July 31, 2004.

29. As of the date of this Notice of Proposed Fine and Administrative Hearing, the Division has not received any of the past due reports noted in paragraph III.25 above.

IV. VIOLATIONS ALLEGED

1. L.W. Packard violated Condition VIII.F, Table 6, item #5 of the New Hampton Permit by failing to submit the semi-annual report for the New Hampton facility to the Division by July 31, 2003, for the period of January through June 2003.

2. L.W. Packard violated Condition VIII.G, Table 7, item #2 of the Ashland Permit by failing to submit the semi-annual report for the Ashland facility to the Division by July 31, 2003, for the period of January through June 2003.

3. L.W. Packard violated Condition VIII.F, Table 6, item #5 of the New Hampton Permit by failing to submit the semi-annual report for the New Hampton facility to the Division by January 31, 2004, for the period of July through December 2003.

4. L.W. Packard violated Condition VIII.G, Table 7, item #2 of the Ashland Permit by failing to submit the semi-annual report for the Ashland facility to the Division by January 31, 2004, for the period of July through December 2003.
5. L.W. Packard violated Condition VIII.F, Table 6, item #5 of the New Hampton Permit by failing to submit the semi-annual report for the New Hampton facility to the Division by July 31, 2004, for the period of January through June 2004.
6. L.W. Packard violated Condition VIII.G, Table 7, item #2 of the Ashland Permit by failing to submit the semi-annual report for the Ashland facility to the Division by July 31, 2004, for the period of January through June 2004.
7. L.W. Packard violated Condition VIII.F, Table 6, item #7 of the New Hampton Permit by failing to submit the calendar year 2003 annual compliance certification for the New Hampton facility to the Division by April 15, 2004.
8. L.W. Packard violated Condition VIII.G, Table 7, item #4 of the Ashland Permit by failing to submit the calendar year 2003 annual compliance certification to the Division by April 15, 2004.

V. PROPOSED ADMINISTRATIVE FINES

1. For the violations identified in Paragraphs IV.1 through IV.6, the Division is choosing not to seek a fine since this enforcement action is the first being issued to L.W. Packard for its non-compliance with the Title V reporting requirements, and the Division is choosing to seek a fine for the more serious violations identified in Paragraphs IV.7 and IV.8.
2. The Division has determined the violation identified in Paragraph IV.7, above, to be a major deviation from the requirements with a minor potential for harm. RSA 125-C:15, I-b specifies a range of \$851 to \$1,500. The Division is seeking a fine of \$1,000 for this violation.
3. The Division has determined the violation identified in Paragraph IV.8, above, to be a major deviation from the requirements with a minor potential for harm. RSA 125-C:15, I-b specifies a range of \$851 to \$1,500. The Division is seeking a fine of \$1,000 for this violation.

The total fine being sought is \$2,000.

VI. REQUIRED RESPONSE, OPPORTUNITY FOR HEARING

Pursuant to Env-C 601.06, L.W. Packard is required to respond to this notice. Please respond no later than October 18, 2004, using the enclosed colored form.

1. If L.W. Packard would like to have a hearing, please sign the appearance section of the colored form and return it to the DES Legal Unit, as noted on the form. A Notice of Scheduled Hearing will be issued.
2. If L.W. Packard chooses to waive the hearing and pay the proposed fine, please have the

authorized representative sign the waiver (lower portion) and return it **with payment of the fine** to the DES Legal Unit.

3. If L.W. Packard wishes to discuss the possibility of settling the case, please have the authorized representative sign the appearance and return it to the DES Legal Unit **and** call the DES Legal Unit to indicate L.W. Packard's interest in settling.

L.W. Packard is not required to be represented by an attorney. If L.W. Packard chooses to be represented by an attorney, the attorney must file an appearance and, if a hearing is held, submit proposed findings of fact to the person conducting the hearing.

VII. DETERMINATION OF LIABILITY FOR ADMINISTRATIVE FINES

Pursuant to Env-C 601.09, in order for any fine to be imposed after a hearing, the Division must prove, by a preponderance of the evidence, that L.W. Packard committed the violations alleged and that the total amount of fines sought is the appropriate amount under the applicable statute and rules. Proving something by a preponderance of the evidence means that it is **more likely than not** that the thing sought to be proved is true.

If the Division proves that L.W. Packard committed the violations and that the total amount of fines sought is the appropriate amount under the applicable statute and rules, then the fine sought will be imposed, subject to the following:

* Pursuant to Env-C 601.09(c), the fine will be **reduced by 10%** for each of the circumstances listed below **that L.W. Packard proves, by a preponderance of the evidence**, applies in this case:

1. The violation was a one-time or non-continuing violation, **and** L.W. Packard did not know about the requirement when the violation occurred, **and** the violation has not continued or reoccurred as of the time of the hearing, **and** any environmental harm or threat of harm has been corrected, **and** L.W. Packard did not benefit financially, whether directly or indirectly, from the violation.
2. At the time the violation was committed, L.W. Packard was making a good faith effort to comply with the requirement that was violated.
3. L.W. Packard has no history of non-compliance with the statutes or rules implemented by DES or with any permit issued by DES or contract entered into with DES.
4. Other information exists which is favorable to L.W. Packard's case which was not known to the Division at the time the fine was proposed.

*******IMPORTANT NOTICE*******

An administrative fine hearing is a formal hearing. Any hearing will be tape recorded, and all witnesses will testify under oath or affirmation. At the hearing, the Division will present testimony and evidence to try to prove that L.W. Packard committed the violation(s) alleged above and that the fine(s) should be imposed. **The hearing is L.W. Packard's opportunity to present testimony and evidence that L.W. Packard did not commit the violation(s) and/or that the fine(s) should not be imposed, or that the fine(s) sought should be reduced.** If L.W. Packard has any evidence, such as photographs, business records or other documents that believe show that L.W. Packard did not commit the violation or that otherwise support L.W. Packard's position, L.W. Packard should bring the evidence to the hearing. L.W. Packard may also bring witnesses (other people) to the hearing to testify on L.W. Packard's behalf.

If L.W. Packard wishes to have an informal meeting to discuss the issues, L.W. Packard must contact the DES Legal Unit at (603) 271-6072 to request a prehearing conference.

Information regarding this proposed fine may be made available to the public via the DES Web page (www.des.state.nh.us). If L.W. Packard has any questions about this matter, please contact the DES Legal Unit, at (603) 271-6072.

COPY

Robert R. Scott, Director
DES Air Resources Division

Enclosure (NHDES Fact Sheet #CO-2002)

cc: Gretchen R. Hamel, Administrator, DES Legal Unit
Michael J. Walls, Assistant Commissioner DES
Jennifer J. Patterson, Sr. Asst. Attorney General, NHDOJ/EPB
Public Information Officer, DES PIP Office
R. Kurowski, EPA, Region 1
G. Chouinard, Chairman of Board of Selectman, Town of Ashland
B. Avery, Chairman of Board of Selectman, Town of Hampton

***** RETURN THIS PAGE ONLY *****

**L.W. PACKARD & COMPANY, INC. IS REQUIRED BY LAW
TO RESPOND TO THIS NOTICE.**

PLEASE RESPOND NO LATER THAN October 18, 2004

Please check the appropriate line and fill in the requested information below.

APPEARANCE On behalf of L.W. Packard & Company, Inc.

_____ I request to have a **formal hearing** scheduled in this matter.

_____ I request to have a **prehearing conference** scheduled in this matter.

_____ I would like to **meet informally** to discuss the issues in this matter.

WAIVER OF HEARING On behalf of L.W. Packard & Company, Inc.

_____ I certify that I understand the right to a hearing regarding the imposition of the proposed administrative fine and that I hereby waive those rights. The fine payment in the amount of \$2,000 paid to "Treasurer, State of New Hampshire" is enclosed.*

** If payment is made by a check, draft, or money order that is returned due to insufficient funds, pursuant to NH RSA 6:11-a, DES may charge a fee in the amount of 5% of the face amount of the original check draft, or money order or \$25.00, whichever is greater, plus all protest and bank fees, in addition to collecting the amount of the original check draft, or money order.*

Pursuant to Env-C 203.05 please provide the following information:

Signature

Date

Name (please print or type): _____

Title: _____

Phone: _____

RETURN THIS PAGE ONLY TO:
Department of Environmental Services ~ Legal Unit
Attn: Michael Sclafani, Legal Assistant
29 Hazen Drive, P.O. Box 95
Concord, NH 03302-0095

ENVIRONMENTAL Fact Sheet



6 Hazen Drive, Concord, New Hampshire 03301 • (603) 271-3503 • www.des.state.nh.us

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Administrative Fines of the Department of Environmental Services

The Commissioner of the Department of Environmental Services (DES) is authorized by several statutes to impose administrative fines for certain violations of those statutes. In order to implement this authority, the Commissioner has adopted rules which specify the procedures for notifying people that a fine is being proposed and which specify the fine amount for any given violation. These rules are identified as Chapter Env-C 600.

Administrative fine proceedings follow a defined path. The first step is for a Division of DES to issue a Notice of Proposed Fine. The Notice will inform you of the violations the Division believes you have committed, together with the dollar amount of the fine that is being proposed. At this point, a final decision as to whether to impose the fine **has not been made** ... the Notice simply initiates the proceeding. The Notice will also inform you that you have a right to have a hearing before a final decision will be made, and may give a date and time for the hearing.

The Notice you receive will have a page attached to it on which you can indicate whether you will attend a hearing or whether you are waiving your right to a hearing and paying the fine which has been proposed. **YOU MUST COMPLETE AND RETURN THIS FORM.** The worst thing you can do if you receive a Notice is to ignore it! Under the rules which have been adopted, the case can proceed even if you don't respond. In order to achieve the best result, you must participate in the process.

When you receive a Notice of Proposed Fine, if you are interested in trying to settle the case without going to a formal hearing you should contact the person identified in the Notice. Many fine cases are settled in this way, often with a lower fine, a payment schedule, and/or a suspended fine. The negotiations need to start soon after the Notice is received, though. Don't wait until the day scheduled for the hearing to ask about settling the case.

If the case proceeds to a hearing, the Commissioner will designate a person to serve as a hearing officer to preside at the formal hearing. The hearing officer will not have prior knowledge of the Division's allegations, and will be neutral insofar as the outcome of the case is concerned. At the hearing, the Division will be required to prove that the violation(s) occurred and that the proposed fine is warranted. You will have an opportunity to ask questions of (cross-examine) the Division staff, and also present your own evidence, including testimony of witnesses if you wish, to show why the fine should not be imposed.

(over)

After the hearing is over, the hearing officer will compile the record (i.e. all of the information that was received at the hearing) and will make a recommendation to the Commissioner as to whether or not the fine should be imposed. The Commissioner will make a decision based on the evidence and testimony, and the decision issued by the Commissioner will specifically state the reasons for the decision.

The rules adopted by the Commissioner require the proposed fine to be reduced in certain circumstances, which are listed at Env-C 601.09. These include that you have not previously violated a law or rule implemented by DES, or that you acted in good faith. The Commissioner also has the discretion to allow you to pay a fine on a payment schedule, and/or to suspend all or a portion of the fine conditional upon remedying the underlying violation or staying in compliance with DES requirements for a specified period of time.

Sometimes people are concerned that the findings and rulings made by the Commissioner might be used against them in a separate proceeding (for instance, if their neighbor sues them for damages arising out of the same violation(s) for which they are being fined). In such a case, DES has accepted payment of the fine with a specific denial of liability. This is like pleading "no contest" to a traffic ticket: you pay the fine assessed, but are not admitting that you did anything wrong.

This fact sheet is intended as a basic source of information concerning DES administrative fines. It is not intended to replace the laws and rules regarding administrative fines, but merely to provide a summary of them.

For more information contact the DES Legal Unit, PO Box 95, Concord, NH 03302-0095, (603) 271-6072.